



VOLUSIA SHERIFF'S OFFICE

MICHAEL J. CHITWOOD, SHERIFF

Office of Chief Deputy Brian M. Henderson - Internal Affairs

REPORT OF INVESTIGATION

REPORT NUMBER: IA 23-014

PERIOD COVERED: September 2, 2022
DATE REPORTED: September 2, 2022
SUBJECT NAME: Deputy John Lowery, #9421
INVESTIGATING OFFICER: Lieutenant Andrew Calkins, #7929

BASIS FOR INVESTIGATION:

In October 2023, the Volusia Sheriff's Office was made aware of a YouTube video depicting an arrest made by Deputy John Lowery on September 2, 2022. The video, which is captured by Allan Carter, portrays him approaching Deputy Lowery in the area of 1900 North Volusia Avenue, Orange City. Carter contacts Deputy Lowery and interrupts him while completing a separate investigation. During the encounter, Carter is arrested by Deputy Lowery for resisting an officer without violence.

A review of the court records revealed the State Attorney's Office filed an Information for the charge of Resisting an Officer Without Violence. The case was later Nolle Prosequi and dismissed by the court.

OFFENSES:

GO-026-02.V.G.1.a. - General Proficiency - VSO personnel are required to maintain the job knowledge, skills and abilities required for the performance of the duties and responsibilities attendant to their positions.

GO-026-02.V.D.1.b. - Courtesy - Employees shall be civil and respectful toward each other and toward the public in general. They shall be especially courteous to visitors, guests, speakers, and instructors.

INVESTIGATION:

On October 26, 2023, Chief Deputy Brian Henderson assigned the incident to the Internal Affairs Unit. This report details the Internal Affairs investigation conducted by Lieutenant Andrew Calkins.

Lieutenant Calkins served Deputy Lowery with a Notice of Internal Investigation. In addition, Deputy Lowery was provided a copy of his Law Enforcement Officer's Bill of Rights. Deputy Lowery signed both documents, acknowledging his receipt.

Lieutenant Calkins reviewed the YouTube video and was able to locate Deputy Lowery's Body Worn Camera (BWC) footage related to the incident. Lieutenant Calkins also obtained the Volusia Sheriff's Office report (#22-16937) and associated court documents. Lieutenant Calkins thoroughly reviewed the aforementioned material and noted the following information.

Lieutenant Calkins observed Deputy Lowery had two BWC videos concerning the incident. The first video, which captures Deputy Lowery's initial contact with Carter, is 12:30 seconds long. Lieutenant Calkins observed Deputy Lowery was stationary in his marked patrol vehicle on East New York Avenue facing North Volusia Avenue. The road, which is a dead end, is utilized to enter the RaceTrac or office buildings to the south.

At 1:35 seconds into the video, Deputy Lowery makes contact with a male and female sitting near the curb at the entrance to the RaceTrac. Conducting a law enforcement investigation, Deputy Lowery spoke with the party and asked for their names. At 2:38, Deputy Lowery turns towards a male, later identified as Carter, who is approaching him from behind with a cellphone camera in his right hand. Deputy Lowery asks Carter, *"what did you say?"* to which Carter responds, *"Your under no obligation to answer any of your questions."* Deputy Lowery says, *"are you serious?"* Carter says, *"because of Fifth Amendment."* Deputy Lowery asks Carter, *"How would you know that?"* Carter then responds, *"I've watched..."* not citing what he watched.

Deputy Lowery requests Carter to produce his identification, citing that Carter didn't cross the street in a crosswalk. Deputy Lowery asks for Carter's identification again and explains that he will be arrested for resisting arrest if he doesn't produce his identification. Carter begins to argue, stating that he isn't impeding traffic flow. Deputy Lowery then takes Carter by the left arm and secures him in handcuffs. Carter says, *"I'll take this charge,"* while Deputy Lowery escorts him to his patrol vehicle. Deputy Lowery searches Carter and places him in the backseat of the patrol

vehicle. After securing Carter, Deputy Lowery returns to the two individuals sitting on the curb and concludes his interaction.

The second video consists of Deputy Lowery completing his paperwork while Carter is in the backseat of the patrol vehicle and the transport to the Volusia County Branch Jail. Lieutenant Calkins noted that while Carter was in the backseat, he complained his handcuffs were hurting. Deputy Lowery immediately exited the vehicle to check the handcuffs, which he adjusted for comfort. Lieutenant Calkins also noted that Carter arrived in his work truck, parked across the street from the office complex to the south. Instead of towing the vehicle, Deputy Lowery allowed Carter the opportunity to contact his employer, who subsequently came and retrieved the car from the scene.

Lieutenant Calkins noted Deputy Lowery's BWC footage captured the same information as the video Carter took, which was depicted on YouTube.

Lieutenant Calkins reviewed the Volusia Sheriff's Office Report #22-16937, which stated the following:

"At approximately 1145 hours on 9/2/2022, Deputy Lowery was at the E. New York Ave side entrance of 1900 N. Volusia Ave, Orange City on foot speaking with a citizen.

Deputy Lowery observed a pedestrian, later identified by Florida Driver's License as Allan Carter (D1), fail to cross E. New York Ave, at the designated crosswalk located approximately 200 feet to the west. Deputy Lowery informed Carter of the pedestrian violation and requested Carter's identification to which Carter refused. Deputy Lowery advised Carter that he was going to issue him a citation for the pedestrian violation and by Carter failing to identify himself he was resisting an officer in the course of official business. Carter again refused and was subsequently arrested for resisting an officer without violence.

It should be noted during this interaction Deputy Lowery was wearing a uniform issued by the Volusia Sheriff's Office with a patch on each shoulder prominently displaying the word "SHERIFF" and a five-pointed star affixed to his uniform. Deputy Lowery's agency issued a marked patrol vehicle with agency insignia and other jurisdictional markings prominently displayed, within 50 feet of this interaction.

Deputy Lowery determined that probable cause exists that Carter knowingly and willfully, obstructed and opposed Deputy Lowery by refusing to identify himself in order for Deputy Lowery to issue Carter a pedestrian violation notice. At the time, Deputy Lowery was engaged in the lawful execution of a legal duty as a Deputy Sheriff in the County of Volusia. At the time, Carter) knew Deputy Lowery was an officer.

Carter was transported to Volusia County Branch Jail without incident."

In addition to the official report, Lieutenant Calkins observed Deputy Lowery wrote Carter a citation (AGSNG4E). The citation was for Florida State Statute 316.130 (11) – Pedestrians; traffic regulations – Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

Lieutenant Calkins reviewed the pertinent court documents related to this incident and observed on September 7, 2022, Assistant State Attorney (ASA) Cameron Brookfield filed an Information for the charge of Resisting an Officer without Violence, a misdemeanor. The document stated, "*COUNT I: ALLAN LEDGER CARTER, on or about September 2, 2022, in the County of VOLUSIA and State of Florida, did unlawfully obstruct or oppose JOHN LOWERY, a law enforcement officer of the VOLUSIA COUNTY SHERIFF'S OFFICE, in the execution of a legal process or in the lawful execution of a legal duty, without offering or doing violence to the person of such officer, contrary to Florida Statute 843.02.*" The information indicated the court found probable cause for the arrest.

Lieutenant Calkins observed that on October 27, 2022, ASA Brookfield filed a Nolle Prosequi dismissing the abovementioned charge.

Sergeant Hachenberger spoke with ASA Brookfield, who explained the arrest was made in good faith and reiterated that they found probable cause. ASA Brookfield explained that after reviewing the facts and circumstances of the case, the pedestrian statute utilized by Deputy Lowery had not met all the elements.

ASA Brookfield explained the road Carter crossed did not have adjacent intersections at which traffic signals are in operation. Due to the road being a dead end, only one intersection was controlled by a traffic signal.

Interview with Allan Carter

On November 3, 2023, at approximately 1317 hours, Lieutenant Andrew Calkins conducted a sworn recorded interview with Allan Carter. The interview was conducted at the Sheriff's Office Administration Building at 123 West Indiana Avenue, DeLand. Sergeant Thomas Hachenberger was present for the interview. Below is a synopsis of the audio-recorded interview:

Carter advised he walked across the dead-end road and was recording Deputy Lowery. Carter stated, "*I came up to the curb on the other side of the road and just yelled or not yelled but loudly spoke you don't have to answer questions.*" Carter stated that Deputy Lowery demanded his

identification. Deputy Lowery told Carter he didn't utilize the crosswalk and needed his identification. Carter refused and was ultimately arrested for failing to identify himself. Lieutenant Calkins asked Carter what he was doing in the area, to which Carter responded, "*That's not relevant.*" Lieutenant Calkins asked Carter if his vehicle was towed from the scene. Carter advised his boss responded to the scene and removed the car for him. Carter stated that because of the incident, his employer verbally reprimanded him. Carter never received a suspension or loss of pay.

Carter advised he was transported to jail and was in custody for approximately twelve hours. Carter posted a bond through a bondsman and was released. Carter was appointed an attorney in the case. Carter pleaded not guilty at first appearance. A few weeks later, Carter received a phone call from his public defender advising him the case had been dismissed.

Lieutenant Calkins asked Carter if anything else had happened due to the arrest. Carter advised after the case, he received a call from his human resource department that his license would be suspended. Carter conducted further research and found the Department of Motor Vehicles (DMV) was going to suspend his license due to the ticket. Carter indicated there was a lack of communication between the entities and was able to correct the issue without his license getting suspended.

Carter advised the video posted on YouTube captured his entire encounter with Deputy Lowery. Carter stated the incident was the first and only encounter with Deputy Lowery.

Interview with Deputy Lowery

On November 17, 2023, at approximately 1535 hours, Lieutenant Calkins conducted a sworn recorded interview with Deputy Lowery. Lieutenant Calkins conducted the interview at 123 West Indiana Avenue, DeLand, at the Sheriff's Office Administration Building. Deputy Lowery, Lieutenant Calkins, Sergeant Hachenberger, and Attorney Mike Lambert were present for the interview. Below is a synopsis of the sworn recorded interview:

Before conducting the interview, Deputy Lowery had the opportunity to review all relevant material obtained during the course of the investigation. Deputy Lowery signed a copy of his Garrity Warning, acknowledging his understanding of the document. Lieutenant Calkins read Deputy Lowery a Volusia Sheriff's Office Administration of Oath / Perjury Warning. Deputy Lowery and Lieutenant Calkins signed this document in the presence of the same personnel.

Deputy Lowery advised he's been employed with the Volusia Sheriff's Office since June 2021. Deputy Lowery indicated he began law enforcement in 1996 with experience from the United States Army and Oakland Police Department in Florida. Deputy Lowery advised he was in the

Army for 23 years. At the time of the incident in 2022, Deputy Lowery was assigned to patrol in the District 6 area, which covers Orange City and Debarry.

Deputy Lowery stated he was working 64 zone when he recognized a female as someone who had been involved in narcotics activity in the area. Deputy Lowery made contact to identify her. While speaking with the female, Deputy Lowery was approached by a male, later identified as Carter. Deputy Lowery stated, *"...I noticed him walking across the roadway holding his cell phone up and he yelled out some stuff about not having to answer questions. And I had noticed him in the truck before sitting in the truck he was in a surveyor's truck and it looked like he was eating lunch or something. So at first my initial reaction was is that he was somebody that he thought that he knew me or that he was just kind of messing around cuz in the video I said are you serious because I thought maybe he mistook me for another deputy. And then that's when he said he doesn't, because I asked him are you serious and he said I don't answer questions so I knew that he was up to something, whatever he was doing with that video camera"*.

Deputy Lowery stated Carter had a cell phone and was recording the encounter. Deputy Lowery told Carter, *"I told him that he had committed a pedestrian violation by not using the crosswalk and that I needed his identification."* Carter refused to answer questions, and Deputy Lowery *"...explained it to him again and he said something to the effect of I don't answer questions I'm not, whatever. And then I told him that he's gonna be placed under arrest and, or I yeah I did tell him he was gonna be placed under arrest and then I handcuffed him and while I was handcuffing he said I'll take the charge."*

Deputy Lowery ultimately arrested Carter and transported him to the Volusia County Branch Jail. Deputy Lowery stated that was his only encounter with Carter.

Lieutenant Calkins asked Deputy Lowery if he believed his encounter with Carter was professional and courteous, to which he responded, *"I do."* Lieutenant Calkins asked Deputy Lowery when he made the arrest if he believed there was probable cause, to which he replied, *"yes sir."* Deputy Lowery indicated he made the arrest in good faith. Deputy Lowery stated the case was ultimately dismissed and never participated in a deposition or any other courtroom testimony.

During the interview, Deputy Lowery admitted he could have utilized other techniques when dealing with First Amendment auditors. Deputy Lowery said he learned from the experience and stated it was his first time dealing with that type of individual. Deputy Lowery indicated he's had subsequent experiences and provided an example while on a crash investigation. Deputy Lowery stated, *"...I was at a, at a crash in the middle of the road and he drove by and yelled out my name and then somebody (unintelligible) yelled out my name called me by name and said Lowery's a dick and looked right at me and I, I didn't respond to him I just watched him drive by I didn't say anything to him..."*

In closing, Deputy Lowery was asked if he violated the following General Orders, and his responses are detailed below:

GO-026-02.V.G.1.a. - General Proficiency No

GO-026-02.V.D.1.b. - Courtesy No

On November 29, 2023, this Internal Affairs investigation was presented to Chief Deputy Brian Henderson and the executive command staff. Upon completion of the presentation, Chief Deputy Henderson determined the following General Order violations:

GO-026-02.V.G.1.a. - General Proficiency Not Sustained

GO-026-02.V.D.1.b. - Courtesy Not Sustained

At the conclusion of the investigation, Chief Deputy Henderson determined that Deputy Lowery would receive remedial training.

EXHIBITS:

- A. Report of Investigation
- B. Official Correspondence
- C. Volusia Sheriff's Office #22-16937
- D. Court Records 2022 104179
- E. Florida State Statue 316.130
- F. Transcript of Interview with Allan Carter
- G. Transcript of Interview with Deputy Lowery
- H. Digital Evidence (Audio of Interviews)

WITNESSES:

Allan Carter
261 Springs Colony Circle Apartment 163
Altamonte Springs, Florida 32714

Volusia Sheriff's Office

123 W. Indiana Avenue
DeLand, FL 32720

Deputy John Lowery

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true to the best of my knowledge and belief.

AND

I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the suspect of the investigation of any rights contained in ss. 112.532 and 112.533, Florida Statutes.

DETECTIVE: A Calkins DATE: 12/18/23

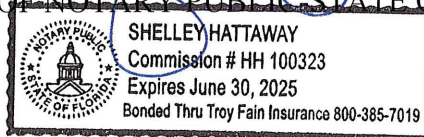
**Lieutenant Andrew Calkins
Internal Affairs Detective Lieutenant**

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

Sworn to (or affirmed) and subscribed before me by means of physical presence or online
Notarized this 18th day of December, 2023 by Sergeant Andrew Calkins

[Signature]

SIGNATURE OF NOTARY PUBLIC, STATE OF FLORIDA



PRINT, TYPE, OR STAMP COMMISSIONED NAME OF NOTARY PUBLIC

PERSONALLY KNOWN OR PRODUCED IDENTIFICATION

TYPE OF IDENTIFICATION PRODUCED

APPROVED BY: B Henderson DATE: 12/18/2023

**CHIEF DEPUTY BRIAN HENDERSON
VOLUSIA COUNTY, FLORIDA**